



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PG06HB-64646

Thomas Snyder and the Director
of the Division on Civil Rights,

Complainants,

v.

Park Crescent Healthcare &
Rehabilitation Center,

Respondent.

Administrative Action

FINDING OF PROBABLE CAUSE

On June 13, 2014, Thomas Snyder (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that the Park Crescent Healthcare & Rehabilitation Center (Respondent) discriminated against him based on his disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when it denied his repeated requests for an American Sign Language (ASL) interpreter during his 39-day stay at the facility. Respondent denied the allegations of disability discrimination in their entirety.¹ The ensuing investigation found as follows.

Respondent, located in East Orange, describes itself as a “premier center for short-term rehab and sub-acute care, as well as long-term care . . . where area physicians send their patients for post-surgical care and rehabilitative care . . . because they appreciate the outstanding quality of care as well as the renowned warmth and personal attention that their patients receive.”

¹ The DCR Director hereby intervenes as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e). However, for the purposes of this determination, the term “Complainant” will refer solely to Thomas Snyder.

Complainant, a New Jersey resident, is deaf. His primary means of communication is through ASL. After a stay at St. Joseph's Hospital for complications from diabetes, he was admitted to Respondent's facility from March 28, 2014, through May 5, 2014. On April 11, 2014, approximately two weeks into his stay, Complainant mentioned to Hilary Porteous-Nye, MSSW, LSW, St. Joseph's Hospital, that he was still waiting for an ASL interpreter at his new location. In particular, he wrote, "I did tell to buiding supervision interpreter but waitling for joe 8 days since no interpreter" [sic].

Porteous-Nye alerted Catherine Purrazzella, Service Coordinator, NJ Division of the Deaf and Hard of Hearing, who, in turn, contacted a social worker at Respondent's facility, Gwen Ogilvie. Purrazzella memorialized her discussion with Ogilvie, in part, as follows:

I faxed Gwen (973-678-8282) the interpreter referral list on April 14th and she received it. She said that they had initially consulted with ASL IRS for their interpreting services but realized that ASL IRS is very expensive. They wanted to charge \$150 an hour. They were still negotiating the prices with them but now have our referral list as another tool. I notified Thomas via text that I am working with Gwen.

On April 16, 2014, Purrazzella had another discussion with Respondent's employees, which she memorialized in pertinent part as follows:

I had not heard back from Gwen so I called to follow up and spoke with the director of nursing and presented my concerns to her. She got Gwen on the phone and we discussed this matter again. Gwen said that she is still trying to get an administrator to authorize payment for this then they can go ahead.

In Respondent's answer to the verified complaint, it acknowledged that it did not provide Complainant with an ASL interpreter "for the majority of his stay at the facility," but claimed that it provided an ASL interpreter on the day of Complainant's discharge. Respondent stated that Complainant "made several requests" for an ASL interpreter but "[a]t no point did Mr. Snyder ever indicate to anyone at [Respondent's facility] that he was unable to express concerns or ask questions." Moreover, Respondent argued that an ASL interpreter was not a required accommodation because Complainant was able to "effectively and articulately communicate with doctors and staff at all times using pen and paper." To support its argument that Complainant

could communicate effectively and articulately without an ASL interpreter, Respondent produced a note that Complainant wrote to a staff member saying, "I am going to home Today. Where is my Black pants, Black-Short, Black Shrit, underwear." [sic] The staff member wrote back, "we will ask the aid to look for it."

Complainant told DCR, through an ASL interpreter, that he did not expect to have an ASL interpreter available at all times. However, he argued that there was a significant difference between asking questions about his clothing and discussing medical issues with a doctor. Complainant stated that he saw a doctor approximately once a week during his stay but was unable to effectively ask questions about his treatment. Complainant stated that Respondent's administrator, Joseph Bernfeld, obtained an ASL interpreter for a meeting on May 6, 2014, but by that point, he had already been discharged. Complainant stated that during that meeting, Bernfeld told him that it was too expensive to hire an ASL interpreter.

Complainant's sister, Sandra Battle, told DCR that her brother was seeking to have an ASL interpreter made available once or twice a week. She stated that the absence of an ASL interpreter caused him to experience confusion and anxiety and placed him "in a precarious situation" of being "told many times to write a response to a question, which can be frustrating as well as time consuming . . . [and] in an effort to answer a question, comprehension is often blurred and sketchy, simply not clear." She told DCR that she was not fluent in ASL, and could communicate with her brother about things such as food and clothing but not medical information. She stated that she tried to schedule a meeting with Bernfeld to discuss the issue. Battle stated that by the time Bernfeld finally met with them, her brother had already been discharged. She stated that even though there were two ASL interpreters at the meeting, Bernfeld kept telling them that retaining ASL interpreters was too expensive.

Porteous-Nye told DCR that during Complainant's treatment at St. Joseph's Hospital, she had seven one-hour sessions and a number of videophone calls with him, and observed that he had difficulty communicating unless he had a trained ASL interpreter. She wrote, "I very strongly

believe that [Complainant] can **NOT** communicate effectively in writing. He is a smart man, but his ability to understand and to express himself is significantly limited when communicating through the medium of written English.” For example, she noted, “[Complainant] and I had some miscommunications over text message. They were immediately cleared up when we communicated face-to-face in sign language or via videophone. Even within our own agency, I noticed that [Complainant] struggled to communicate clearly with some of the staff who are less proficient in ASL.” Porteous-Nye wrote:

I have worked with the Deaf for the better part of 20 years and believe I am a very good gauge of what an individual’s linguistic capabilities are. In [Complainant]’s case, his written language is slightly above average regarding what one might expect from a Deaf individual . . . English is NOT a Deaf person’s first language and the syntax of ASL is quite different than that of English. This leads to many misunderstandings when communicating in written form with a Deaf ASL Signer. . . . Knowing [Complainant], even when I have communicated with him via text message or writing, I have written my language more in ASL syntax or concept for him to understand me better. Even with that, there were some miscommunications between us. Without ASL, it is impossible for [Complainant] to understand and convey an understanding of his medical condition, treatment, and history.

[emphasis added].

During the course of the investigation, DCR staff communicated with Complainant via video relay telephone and in-person through an ASL interpreter. On one occasion, Complainant appeared at DCR’s Newark office on short notice. Because DCR was unable to arrange for an interpreter on such short notice, a DCR representative attempted to communicate with Complainant in writing. The DCR representative noted that she was unable to effectively communicate with Complainant, and that Complainant appeared to be frustrated by his inability to communicate. Complainant produced a pad of paper on which one of Respondent’s employees wrote: “How well can you write...can you write extended sentences easily?” (ellipsis in original), and Complainant replied in writing, “I ~~said~~ I said that ask you communication ASL need.” [sic]

Analysis

The LAD states, “All persons shall have the opportunity . . . to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation”² without discrimination on the basis of disability. N.J.S.A. 10:5-4. Places of public accommodation must make “reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability,” unless it can demonstrate that making the accommodation would impose an “undue burden on its operation.” N.J.A.C. 13:13-4.11(a).

It necessary follows that the LAD requires places of public accommodation to take reasonable steps to make sure that persons who are deaf can enjoy the goods, services, and facilities that are available to everyone else. N.J.S.A. 10:5-12(f). For instance, hospitals must provide reasonable accommodations to assist persons who are deaf in communicating with hospital staff. Medical providers are not required to accede to a patient’s every demand and in precisely the manner the patient requests. But they must provide accommodations that are reasonable under the individual circumstances of the communication. See generally Bortngesser v. Jersey Shore Med. Ctr., 340 N.J. Super. 369 (App. Div. 2001). During a hospital stay, for example, brief and relatively simple communications such as inquiring about meal times or purchasing an item in the gift shop, may generally be accomplished through written notes or pointing to items. For more complicated interactive communications, such as discussing symptoms, diagnosis, and treatment options, other forms of communication, such as interpreters, may be required. Id. at 386.

When appropriate for effective communication, reasonable accommodations may include auxiliary aids and services such as qualified sign language interpreters, remote video interpreting

² The LAD defines “place of public accommodation” broadly to include entities that offer goods or services to the general public such as “any dispensary, clinic or hospital.” N.J.S.A. 10:5-5(l).

services, assistive listening devices, amplified phones, TTYs/TDDs or other devices and services such as computer assisted real-time transcription for large group community meetings. Reasonable accommodations for persons who are deaf may be different than for those who are hard of hearing. But in all cases, accommodations need to address the person's specific limitations and abilities. Thus, the Appellate Division has declared that when attempting to gauge the effectiveness of a communication, the "fact that the hospital reasonably may have thought that the [deaf patient] understood the various medical discussion and procedures is not enough." Id. at 389. Instead, the "effectiveness of the method chosen must be viewed from the perspective of [the patient]." Id. at 390.

In determining whether a particular accommodation would impose an undue burden, factors to be considered include (a) the overall size of the business that runs the place of public accommodation with respect to the number of employees, number and types of facilities, and size of budget; (b) the nature and cost of the accommodation needed; (c) whether the accommodation sought will result in a fundamental alteration to the goods, services, program, or activity offered, and (d) whether the accommodation sought involves an alteration that will threaten or destroy the historic significance of a building or facility that is eligible for listing the National Register of Historic Places under the National Historic Preservation Act or designated under State or local law. N.J.A.C. 13:13-4.11.

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits but merely an "initial culling-out process" whereby a preliminary determination is made that further action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,

226 (App. Div. 1978). If the Director determines that probable cause exists, the matter will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). On the other hand, if the Director determines that there is no probable cause, then that finding is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

Here, it is undisputed that Respondent is a place of public accommodation and that Complainant is a person with a disability for purposes of this analysis. It is also undisputed that on several occasions during his stay, Complainant informed Respondent that he needed an ASL interpreter. And the parties appear to agree that Complainant had the right to be able to participate in his care and treatment to the same extent as a patient without a disability.

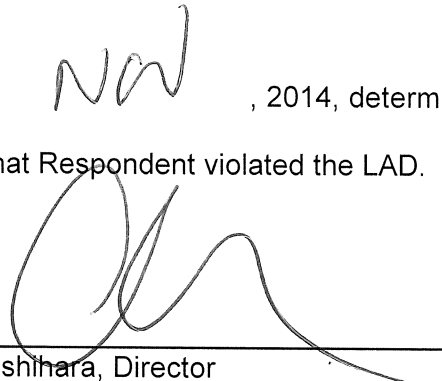
The parties disagree as to whether the lack of an ASL interpreter was a function of fiscal considerations. In its answer to the verified complaint, Respondent wrote, “[I]t is specifically denied that any member of Park Crescent Healthcare & Rehabilitation Center’s administration ever told Mr. Snyder that it was too expensive to provide him with an American Sign Language Interpreter.” That assertion is somewhat called into question by Complainant and Battle’s statements and Purrazzella’s notes memorializing her discussions with Ogilvie (e.g., “[Respondent] said that they had initially consulted with ASL IRS for their interpreting services but realized that ASL IRS is very expensive”). But in any event, Respondent is not now arguing that providing an ASL interpreter would have imposed an undue hardship on its operation for financial reasons. Instead, it argues that no such accommodation was necessary because Complainant communicated “effectively and articulately . . . at all times using pen and paper.”

It is undisputed that Complainant was able to communicate regarding relatively simple and mundane matters such as asking about the whereabouts of his clothing. The critical issue is whether he was able to effectively communicate regarding more complex medical procedures or discussions. Complainant stated that he saw a doctor approximately once a week during his five

and a half weeks at the facility but was unable to ask questions about his treatment. Porteous-Nye told DCR that it was "impossible" for Complainant to "understand and convey an understanding of his medical condition, treatment, and history" without an ASL interpreter. Respondent's argument that "[a]t no point did Mr. Snyder ever indicate to anyone at [Respondent's facility] that he was unable to express concerns or ask questions," is somewhat belied by the fact that Complainant repeatedly told Respondent that he needed an ASL interpreter. Respondent may ultimately persuade an administrative law judge that Complainant was able to effectively communicate with Respondent. But for purposes of this preliminary assessment, the Director is satisfied that there is a reasonable ground of suspicion to believe that Complainant was not sufficiently able to receive complex medical information from Respondent, or successfully convey his thoughts, opinions, questions, and concerns to medical staff, during the full course of his stay.

Stated differently, the Director finds for purposes of this disposition only, that because Complainant is deaf and primarily communicates through an ASL interpreter, and given the limitations of his communication ability when not using ASL as purported by Porteous-Nye, Complainant, Battle, and observed by a DCR staff member, his request for an ASL interpreter when discussing medical issues such as symptoms, diagnosis, procedures, and treatment options with a doctor or healthcare professional amounts to a reasonable accommodation. In the absence of any allegation--or evidence--that such an accommodation would have imposed an undue hardship on Respondent's operations, probable cause is found to substantiate the allegations in the complaint.

WHEREFORE, it is on this 26th day of Nov, 2014, determined that PROBABLE CAUSE exists to credit the allegations that Respondent violated the LAD.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS